

[Federal Register: October 7, 1994]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171-180

[Docket No. HM-221; Notice No. 94-9]

RIN 2137-AC62

Alternate Standards for Open Head Fiber Drum Packaging

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

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SUMMARY: On August 29, 1994, the President signed the ``Hazardous Materials Transportation Authorization Act of 1994'' (the Act). Section 122 of the Act requires RSPA to examine requirements that pertain to open head fiber drum packaging in domestic transportation. Specifically, RSPA is to determine whether there are standards other than the performance-based standards adopted under RSPA's rulemaking Docket No. HM-181, that will provide an equal or greater level of safety for the transportation of liquid hazardous materials. The purpose of this ANPRM is to solicit comments and proposals for alternate standards for open head fiber drum packaging.

DATES: Comments must be received on or before December 12, 1994.

ADDRESSES: Comments to this ANPRM should be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington DC 20590-0001. Comments should identify the Docket (HM-221) and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8419 of the Nassif Building, 400 Seventh Street, SW, Washington, DC 20590-0001. Telephone: (202) 366-5046. Public dockets may be reviewed between the hours of 8:30 a.m. and

5:00 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Potter, Office of Hazardous Materials Standards, (202) 366-4488, RSPA, U.S. Department of Transportation, 400 Seventh Street SW, Washington DC 20590-0001.

SUPPLEMENTARY INFORMATION: Section 122 of the Act (Pub. L. 103-311) reads as follows:

**SEC. 122. USE OF FIBER DRUM PACKAGING.**

(a) INITIATION OF RULEMAKING PROCEEDING.--Not later than the 60th day following the date of enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding to determine whether the requirements of section 5103(b) of title 49, United States Code (relating to regulations for safe transportation) as they pertain to open head fiber drum packaging can be met for the domestic transportation of liquid hazardous materials (with respect to those classifications of liquid hazardous materials transported by such drums pursuant to regulations in effect on September 30, 1991) with standards other than the performance-oriented packaging standards adopted under docket number HM-181 contained in part 178 of title 49, Code of Federal Regulations.

(b) ISSUANCE OF STANDARDS.--If the Secretary of Transportation determines, as a result of the rulemaking proceeding initiated under subsection (a), that a packaging standard other than the performance-oriented packaging standards referred to in subsection (a) will provide an equal or greater level of safety for the domestic transportation of liquid hazardous materials than would be provided if such performance-oriented packaging standards were in effect, the Secretary shall issue regulations which implement such other standard and which take effect before October 1, 1996.

(c) COMPLETION OF RULEMAKING PROCEEDING.--The rulemaking proceeding initiated under subsection (a) shall be completed before October 1, 1995.

(d) LIMITATIONS.--

(1) The provisions of subsections (a), (b), and (c) shall not apply to packaging for those hazardous materials regulated by the Department of Transportation as poisonous by inhalation under chapter 51 of title 49, United States Code.

(2) Nothing in this section shall be construed to prohibit the Secretary of Transportation from issuing or enforcing regulations for the international transportation of hazardous materials.

Detailed comments and proposals are requested that will assist RSPA in developing an appropriate regulatory proposal consistent with the

requirement quoted above. Of particular importance is the determination called for in paragraph (b) of Section 122 that a packaging standard to be adopted provide an equal or greater level of safety for domestic transportation of liquid hazardous materials than would be provided if the performance-oriented packaging standards specified in 49 CFR part 178 subparts L and M were applied. Any interested person is invited to present a proposal, preferably in the form of a draft standard, that would assist RSPA in accomplishing the intended effect of this law. The proposal should include a methodology for evaluating comparative levels of safety and estimates, where available, of cost differences between present and proposed packaging.

In addition, comments are invited on the issue of whether alternate standards for open head fiber drums should be limited to domestic transportation of liquid hazardous materials. If packagings authorized by alternate standards would cost less than the performance standard packaging adopted under HM-181, but were not authorized for international shipments, an unfair competition issue could be raised in relation to international trade agreements.

## Regulatory Analyses and Notices

### A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This advance notice of proposed rulemaking is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This advance notice of proposed rulemaking is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979).

### B. Executive Order 12612

RSPA will evaluate any proposed rule in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism").

### C. Regulatory Flexibility Act

RSPA will evaluate any proposed rule to determine whether it would have a significant economic impact on a substantial number of small entities.

### D. Paperwork Reduction Act

There are no new information collection requirements in this

advance notice of proposed rulemaking.

#### E. Regulations Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Issued in Washington, DC on October 4, 1994, under authority delegated in 49 CFR Part 106, Appendix A.

Robert A. McGuire,

Deputy Administrator for Hazardous Materials Safety.

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